THE FORMAL BASES OF LAW. By Giorgio Del Vecchio. The Boston Book Co., 83-91 Francis St., Boston. 1914. pp. lvii, 412. $4.50.

It is an illustration of the degree to which scientific study is affected by practical needs "that jurists, who have determined so many formal concepts—of contract, servitude, wills, forfeitures, and penalties—have studied the chief concept, that of law, only in its concrete, and not in its formal force" (Lotmar, quoted p. 110); particularly because Del Vecchio is probably correct in asserting that abstraction is a logical process more familiar to jurists than to any other class of scientists. The priority thus given to immediate experience over legal theory is, naturally, peculiarly marked among Anglo-American lawyers, because of the form in which our law exists and the manner in which they are constrained to apply it. Del Vecchio believes that law should be clearly and distinctly understood by everyone; and though confessing (pp. 2-4) that our intuitional sense of law, and our progress without its definition, make doubtful the advisability of an attempt to define it, nevertheless essays to do so.

The volume contains three essays. The first is a strictly methodological examination into the philosophical presuppositions of a concept of law; it seeks to answer the questions whether an objective and universal definition of law is possible, and if possible, how it must be sought. The author starts with the principle that the only knowledge truly absolute, transcending realized experience, must be deduced —so Del Vecchio contends— from a pure "idea." "Necessity" and universality being foreign to finite experience, of which positive law is an embodiment, the concept of law cannot be derived from the rules (if such exist and be discoverable) that describe the temporal changes in positive law—which are mere phases in its course, and can "only tell. . . . where, when, and why its particular guises appeared" (pp. 93, 102, 208),—nor from a comparative study of its contemporaneous identities, similitudes, or particularities, which can at best yield "generalizations," leaving an abyss between the generality of actual and the universality of possible juridical experience (pp. 25, 52, 61, 66, 81). The formal concept of Aristotelian and Kantian philosophy is therefore proclaimed as the rational principle that bridges this abyss. This "form," "essence," or "concept" (hence the book's title) is not a mere generalization of past phenomena, but is "a universal," logically anterior to every particular example or application, "the potential synthesis" of all possible concrete (realized or unrealized) phenomena of positive law. Its propositions are "materializations" of, or the "content" of the "form" (§§ 53, 55, 56, 59). When we are told that every juridical datum reflects this form, "which renders it possible" (§ 60), and that "experience is such only in virtue and in function of the logical form" (§ 61; cf. 98, 99), the author seems to approach the view-

point of the neo-Hegelians. But, in fact, he scornfully repudiates their attribution of creative power to the "form;" "in order that law may enter empirical reality. . . . it has need of an efficient force or sufficient historical motive" (§§ 55-6, 83-4).

The second essay of the volume discusses the elements that enter into the concept of law. Abandoning here, inconsistently enough, the rationalistic process, he discusses the purpose of law, the relation of law and force (§§ 97, 100, 105, 115-24, 131, 36), of manners, morals, and law (§§ 96, 107-09, 168, 173), of custom and law (§§ 113-14), of rights and social utilities, and the origin and growth of law (§§ 104, 112). There are some good things in this part of the book. It is a useful guide to the literature; the discussion of the psychical element in all legal acts, and the consequent necessity of weighing intent in all juridical judgments (§§ 87-95, 110) is well put; the same is true of the discussion of legal rights (§§ 101, 131, 127 et seq.), and of the "purpose definitions" of law (§§ 51, 85-6, 138-42). Force is excluded from the definition of law (§ 97); but, despite Del Vecchio's protest to the contrary, an attentive reader can hardly distinguish his theory of positive law from that of the Austinian school (§§ 100, 105, 115-24, 131-36).

The third essay (cf. pt. I, ch. 2-3) deals with natural law as the theory of justice, and offers little of interest. Del Vecchio's theory is that natural law is a mutable variety of law, falling under the general concept (§§ 16, 42); but though it changes like positive law, with human experience, it remains outside of and "opposed" to positive law (§ 20; cf. 103).

His quarrel with the empirical study of positive law is merely with its philosophical pretensions in putting facts before ideas (pp. 60, 88, 98, 108). It is an illusion of the empiricist that he discovers ideas in facts, instead of recognizing them: "From such mental insubordination and ingratitude . . . . comes the modern science of law, heralded as a philosophy" (p. 101). But though one may admit that he who sets out to study law historically or comparatively must start with some conception, or test, of "law" (pp. 68-9, 81, 83, 102-04), the question still remains whether we ought not rather to look to psychology and ethnological jurisprudence than to pure reason for guidance in giving definiteness to that conception. In fact there are many admissions that the "form" has itself an unfolding in growing consciousness, if not a "causal" history (pp. 37, 68, 74, 77, 103, 112, 125, etc).

Apart from the question of the concept of law, no writer could more openly accept the ideas of "the physical and social relativity of law," "the interpenetration of all social facts," the view that law is "based on human nature," that it is "the expression and effect of the dominant social force" (p. 274), and that such social factors as economic conditions are "intrinsic coefficients of law" (cf. §§ 27, 32 and pt. II, ch. 6). "The true constancy," he writes "of the historical changes of law is found in its relation to

the other elements of social life" (§ 41). He accepts wholeheartedly for law Spencer's conception of historical movement "as the progressive adaptation of human society to environment" (pp. 54, 64). He therefore denounces the "blind obsequiousness to pure reason" which led the older school of natural law, and leads others today, to disregard empirical data (pp. 87, 98), and finds much to praise in the comparative study of law (pp. 50, 61), and in the Historical School (pp. 50, 51, 85; cf. § 32),—although naturally deploring the disappearance of the latter's original subjective element. Indeed, he goes so far as to declare (p. 53) that the "infrangible bonds between legal institutions and the conditions of existence . . . . are realized and understood more or less consciously by every people, or its major part, in every moment of its life." Which assertion will probably recall to the American reader, Professor Gray's reflections upon Pells v. Brown ("Nature and Sources of the Law," § 503).

The book is obscure in places in details, and on fundamentals is both inconsistent and sterile. This is least true of the second essay. Much in the book is of course well enough said; but there is certainly little or nothing that is original or powerful. There is no contribution to the psychological questions involved; no hint that the author has any grasp of the nature of scientific hypothesis; no contribution toward the proof and illustration of the interdependence of law and other products of culture; no aid on the distinction between legal and other social sanction,—although this was his self-appointed task (p. 5). All this is reflected in the definition of law finally stated (p. 218): "Law is the objective coordination of possible acts among men according to an ethical principle which determines them and prevents their interference." One page of commentary on Kant and Spencer would have accomplished as much.

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